

# MAINE APPRAISER NEWSLINE

FALL 2002

## A Few Words From the Chairman

*James H. Murphy*

It has been a year that I have been on the Board of Real Estate Appraisers and nine months as Chairperson and have enjoyed the formality of the meetings and the not so enjoyable process of Hearings of Appraisers that have been before the Board.

Of the numerous complaints brought forward by the Complaint Officer the results of Board's investigation most often concludes that there is a lack of Appraiser file data, lack of dates and no photographic records (negatives or actual photo's). The Investigator frequently does not find file data and/or hard copies of the appraisals nor any research notes. Comments like, "I keep my records on my computer" or "I have them in my head" or "Oh, that must be a computer glitch", are frequently heard. USPAP requires that records be maintained for seven years.

Many of the other complaints that come before the board continue to fall into the area of "Who is the Client?" On the one hand the consumer is told he must pay for an appraisal. They in turn assume that since they are paying for it then it is legally theirs. However, we as appraisers know, it is the entity who orders the appraisal who is the client. This typically is the mortgage broker or lending organization. However, the board often hears of unprofessional behavior on the part of the appraiser licensee with regard to acceptance of fees and the completion of an appraisal or the proper procedure regarding the release of information from a prior client. Many of these are timing issues, but it is outrageous for anyone to have to wait three weeks or more for the

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## BOARD MEMBERS

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CERTIFIED RESIDENTIAL APPRAISER**

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LICENSED APPRAISER**

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**JOSEPH H. HERLIHY, COMPLAINT OFFICER  
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**GAIL HANSCOM, BOARD MEMBER  
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**DONALD P. BAMMAN, BOARD MEMBER  
CERTIFIED GENERAL APPRAISER**

## BOARD MEETINGS SCHEDULED

### 2002-2003

Oct. 01, 2002	May. 06, 2003
Nov. 05, 2002	Jun. 03, 2003
Dec. 03, 2002	Jul. 01, 2003
Jan. 07, 2003	Aug. 05, 2003
Feb. 04, 2003	Sep. 02, 2003
Mar. 04, 2003	Oct. 07, 2003
Apr. 01, 2003	Nov. 04, 2003
	Dec. 02, 2003

Dates and times frequently change, please call ahead before coming! (624-8615)



*From the Chair continued from page 1...*

release of a product that is already paid for. Professional means accepting work that one is qualified and able to complete accurately within a reasonable period of time.

On the federal front, the board was audited by the Appraisal Foundation in July and received a good report. The reviewers felt the Maine board was upholding its responsibility to protect the public and was administering sound decisions and rulings in their disciplinary proceeding as well as administratively. Over the summer, the Appraiser Qualifications Board has been reviewing a recommendation to increase the pre-licensure educational requirements to include college degrees. This board requested that there be an equivalency provision added to allow more people rather than fewer people into the profession. We as licensees will also be facing a change in the USPAP course requirements. As of January 1, 2003 the states are required to utilize only the nationally approved seven (7) hour continuing education USPAP course to be taught only by nationally certified USPAP instructors. The nationally approved fifteen (15) hour qualifying education course must be implemented by the states by 2005.

We, the Board, and the Licensees within the State of Maine must continue to produce the most reliable product that can be done with diligence and pride within the scope of USPAP.

Jim Murphy, Chairperson



**REMEMBER!**

**You need to complete a minimum of 7 hours of the Uniform Standards of Professional Appraisal Practice (USPAP) as part of your 28 hours of continuing education to renew your license.**



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## **COMPLAINT OFFICER'S REPORT FALL 2002**

### **Joe Herlihy, Complaint Officer**

First a few comments:

The Maine Board of Real Estate Appraisers (Board) has the option of issuing a 'Letter of Guidance'. This occurs when the Board does not believe that violations have occurred, but it was too close a call to ignore. Several 'Letters of Guidance' have been issued by the Board, but the details are not printed here, since there is no admission to any violations required of the Licensee.

The Board is now routinely assessing the Licensee for the actual expenses incurred by the board for investigations and enforcement duties when there has been a violation of Law resulting in a Consent Agreement, or sanctions are ordered pursuant to an adjudicatory hearing. These costs, in addition to any other fines, run from a few hundred to several thousand dollars.

The references to the applicable law and rules may vary in this report, depending upon the time of the alleged violation(s).

In all instances the parties to consent agreements are the Licensee, the Maine State Board of Real Estate Appraisers and the State of Maine Department of the Attorney General. These presentations have been abbreviated; the entire file may be inspected at the offices of the Department of Professional and Financial Regulation in Gardiner, Maine.

**REA 120, 128, 132, 141 and 147: On April 18, 2002, following an adjudicatory hearing, the board issued a 'Decision and Order' concerning the following licensee:  
Daniel J. Murphy, MECR218**

The complaint(s) alleged violations of 32 M.R.S.A. Sec. 14014(1), including:

- B. The licensee commits an act or omission in the practice of real estate appraising that constitutes...misrepresentation with the intent to substantially benefit the licensee.' Facts supporting this finding include Mr. Murphy's representation of 1999 comparables as being year 2000 sales. He misrepresented to several clients during telephone calls that he was the licensee's partner when he had no partner. He collected appraisal fees and did not perform the work and neither did he return the funds despite repeated requests to do so. Additionally, the licensee did not return repeated phone calls and misrepresented that he had performed appraisals when, in fact, he had not.
- G. The licensee violates this Act, or any rule promulgated under this Act.' The Board has adopted the Uniform Standards of Professional Appraisal Practice (USPAP).

#### **Ethics-Competency:**

Misrepresented to several clients during telephone conversations that he was the licensee's partner when he had no partner. He collected appraisal fees and did not perform the work and did not return the fees despite repeated requests to do so. He did not return repeated phone calls and misrepresented that he had performed appraisals when, in fact, he had not. He did not maintain adequate work files for the requisite 5 years and in one instance did not assure himself of geographic competency. He did not sign various certifications and in one instance did not take required measurements.

#### **Ethics-Conduct:**

Received money without providing services. His communications were fraudulent and misleading as were the faxing

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of two page reports that were intended to represent competent appraisals.

### **Ethics-Confidentiality**

Faxed an appraisal to a person not entitled to receive same.

Violated other USPAP provisions including 2-1(a), (b), (c), 2-2 (b)(ii), (v), (vii), (viii), (ix) and (xii).

J. The licensee demonstrates negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

Facts supporting violations of this section include non completion of several appraisals, missing data, not returning phone calls, not responding to requests from the Board or its Investigator regarding appraisal related issues and complaints and numerous USPAP violations.

The Board concluded by a vote of 6-0 that Daniel J. Murphy committed at least 35 violations and there were grounds to take disciplinary action against the license of Daniel J. Murphy.

Therefore the Board ordered that:

1. Daniel J. Murphy's license be suspended for a period of 360 days effective midnight May 8, 2002
2. Daniel J. Murphy shall pay a fine of \$5,000 to the Board clerk by June 9, 2002
3. Daniel J. Murphy shall pay costs totaling \$3,751.86 to the Board clerk by June 9, 2002
4. Daniel J. Murphy receive a reprimand for each of the violations
5. Daniel J. Murphy's license be subject to a 2 year probation from the date of the end of his suspension during which time he shall submit monthly logs to the board.
6. Daniel J. Murphy, during suspension, shall enroll in and successfully complete a 40 hour basic appraisal course, including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP). This education shall not be eligible for credit toward the continuing education requirement for renewal.

**REA 130 and 131: On March 14, 2002, following an adjudicatory hearing, the board issued a  
'Decision and Order' concerning the following licensee:  
Krista Nguyen Small MERA1340**

The complaint(s) alleged the following violations of 32 M.R.S.A. Sec. 14014(1):

B. The licensee commits an act or omission in the practice of real estate appraising that constitutes...misrepresentation with the intent to substantially benefit the licensee.

Facts supporting this finding include Ms. Smalls forging her employer's signature on approximately 13 appraisals and representations that her comparables and related data were appropriate and accurate when, in fact, they were not. Moreover, she directly billed approximately 13 clients and received fees directly from several without her employer's knowledge or permission. Additionally, she produced dual appraisal reports regarding the same property and submitted inflated figures to allow for a mortgage to be possibly granted.

F. The licensee makes a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications.

Ms. Small by signing numerous appraisals and submitting them to mortgage companies without her supervisor's approval or knowledge, and also by performing an appraisal on property that was commercial, held herself out to be an appraiser qualified to perform such appraisals when, in fact, she was not. Her appraisals required supervision, review and approval by a certified general appraiser.

G. The licensee violates this chapter or any rule adopted under this chapter.

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The Board has adopted the Uniform Standards of Professional Appraisal Practice (USPAP). The Respondent violated USPAP provisions pertaining to Ethics by engaging in criminal conduct by forging her employers name to appraisals without his permission or knowledge; by not objectively performing her appraisals; by reporting predetermined conclusions in her appraisal, by communicating fraudulent reports; by not retaining a work file and documentation for each appraisal; by not having the experience or licensure to competently complete certain appraisal assignments and by not advising her client that the work contracted for was different from the work required-i.e. Agreeing to perform a residential appraisal on a commercial property.

The Respondent, as documented in the above findings, violated other USPAP provisions including SR1-1 (a),(b),(c);1-2(a);1-2(c),(e),(f),(g),(h); 1-4(a),(b); 1-3(b), 1-4(a), (c)(i)(iv) and 2-1(a),(b),(c), 2-2(a)(vii),(viii),(ix),(x) and (xi).

H. The licensee accepts a fee for performing an independent appraisal service when in fact, the fee is or was contingent upon the appraiser's reporting a predetermined analysis, opinion or conclusion.

Ms. Small accepted fees unbeknownst to her employer that were contingent on her reporting a predetermined opinion regarding the 5 Den Drive property.

I. The licensee fails or refuses without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal.

The Respondent issued 2 reports regarding 5 Den Drive without adequate comparables and also failed to use applicable comparables regarding the St. John Street property.

J. The licensee demonstrates negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal.

The information re: rents at St. John Street were incorrect as was the appraisal for a residential rather than commercial property; the properties listed as comparable were inappropriate re: St. John Street and other properties including Den Drive, Scarborough.

L. The licensee engages in appraisal activity requiring a license under this chapter that is beyond the scope of acts authorized by the license held.

The property at St. John Street was listed as a commercial property, Ms. Small was not licensed to appraise commercial properties. Additionally she appraised at least 13 other residential properties and submitted her work to clients without her supervisor's knowledge or written approval.

The Board concluded by a vote of 5-0 that Krista N. Small committed at least 12 violations of applicable statutes and USPAP rule, that there are grounds based upon the allegations found in the complaint to take disciplinary action against the license of Krista N. Small. Therefore the Board ordered that:

1. Krista N. Small's Registered Appraiser Trainee license is hereby suspended for 360 days
2. The Respondent shall pay a fine of \$6,000 (\$500 per each of 12 violations) within 60 days of receipt of this decision
3. Respondent shall pay costs of \$3,955.68.

**REA 115 and 116: On May 16, 2002, following an adjudicatory hearing, the board issued 'Decisions and Orders' concerning the following licensees:**

**REA 115: Donald A. St.Jean, MERA1364 (Appraiser)**  
**and**  
**REA 116: Jefferey A. Patterson, MECR120 (Supervisor)**

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The complaints alleged the following violations of 32 M.R.S.A. Section 14014(1):

B. 'The licensee commits an act or omission in the practice of real estate appraising that constitutes, dishonesty, fraud or misrepresentation with the intent to substantially benefit the licensee or another person.'

The Respondents misrepresented the appraised value by the selection of comparables, resulting in an inflated value of the subject property.

G. The licensee violates this chapter or any rule adopted under this chapter. (USPAP)

**Ethics-Conduct:**

The Respondents attempted to find a predetermined value on the subject property.

**Ethics-Competency:**

The Respondents did not fully inspect the subject property or comparables and did not demonstrate knowledge of the market area.

Standards Rule 1-1(b)

More appropriate sales of comparable properties were readily available to be used by the Respondents, etc.

Standards Rule 1-1(c)

The sales data used was inadequate, Respondent did not obtain comparables in Maine and those utilized in New Hampshire were not comparable.

Standards Rule 1-4(a)

The relevant available comparable properties were not analyzed.

Standards Rule 2-1(a)

The appraisal as a whole document is misleading due to the appraised value, comparable data and adjustments.

**Regarding REA 116:**

Standard Rule 2-5

The Respondent Supervisor signed the appraisal report.

I. The licensee fails or refuses without good cause to exercise reasonable diligence in developing an appraisal report or communicating an appraisal.

The accuracy of the data utilized were not confirmed and the proper comparables were not used. The neighboring property was not used as a comparable and there was no demonstrable research on land values in Maine. The appraisal was full of inconsistencies.

J. The licensee demonstrates negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

**REA 115:** The Board concluded, by a vote of 5-0 that there are grounds based upon the above findings of fact to take disciplinary action against the license of Donald A. St.Jean. The Board therefore ordered.

1. A reprimand for the violations contained herein

2. A fine of \$1,000

3. Successful completion of a Board approved 40 hour basic course and a 15 hour USPAP course, by December 31, 2002. This education shall not be eligible for credit toward the continuing education requirement for renewal.

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**REA 116:** The Board concluded, by a vote of 5-0 that there are grounds based upon the above findings of fact to take disciplinary action against the license of Jeffery A. Patterson. The Board therefore ordered.

1. A reprimand for the violations contained herein
2. A fine of \$2,000
3. Payment of costs totaling \$3,193.70
4. Successful completion of a Board approved 40 hour basic course and a 15 hour USPAP course, by December 31, 2002. This education shall not be eligible for credit toward the continuing education requirement for renewal.

**REA 125 and 126: On May 16, 2002, following an adjudicatory hearing, the board issued 'Decisions and Orders' concerning the following licensees:**

**REA 125: David W. Mills, MEAP 1084 (Supervisor)**  
**and**

**REA 126: Patrick O. Donahue, MERA1395 (Appraiser Trainee)**

The complaints alleged the following violations of 32 M.R.S.A. Section 14014(1):

G. The licensee violates this chapter or any rule adopted under this chapter. (USPAP)

**Ethics-Conduct:**

The Respondents did not find the highest and best use regarding comparable #2, which was commercial and could have contained an additional lot. Moreover the comparable property should have been listed in the appraisal as commercially zoned.

**Ethics-Competency.**

Same as 1. above

**Standards Rule 1-1(b)**

More appropriate sales of comparable properties were readily available to be used by the Respondents. The appraisal Report carelessly stated that the subject property had not been sold during the past year when such was clearly not the case.

**Standards Rule 1-1(c)**

The sales data used was inadequate. It should have been verified. Information necessary and absent from the Respondent's records include the calculation of gross living area; the date of the anticipated completion of the improvements; support data justifying the use of the comparables; and there was no adjustment for age and condition of the comparables as compared to the subject property.

**Standards Rule 1-4(a)**

The relevant available comparable properties were not analyzed.

**Standards Rule 2-1(a)**

The appraisal as a whole document is misleading. There are no means by which to verify the square footage of the proposed house on the subject property since there are no floor plans referred to, etc. The sales history is inaccurately stated and the second comparable property is not noted as being commercially zoned or containing a potential second lot.

**Regarding REA 125:**

**Standard Rule 2-5**

The Respondent Supervisor signed the appraisal report.

I. The licensee fails or refuses without good cause to exercise reasonable diligence in developing an appraisal report or communicating an appraisal.

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The accuracy of the data utilized were not confirmed and the proper comparables were not used.

J. The licensee demonstrates negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

See all of the above reasons.

**REA 125:** The Board concluded, by a vote of 5-0 that there were grounds based upon the above findings of fact to take disciplinary action against the license of David W. Mills. The Board therefore ordered:

1. A reprimand for the violations contained herein
2. A fine of \$3,000
3. Payment of costs totaling \$3,072.15
4. Successful completion of a Board approved 40 hour basic course and a 15 hour USPAP course, by December 31, 2002. This education shall not be eligible for credit toward the continuing education requirement for renewal.



**REA 126:** The Board concluded, by a vote of 5-0 that there are grounds based upon the above findings of fact to take disciplinary action against the license of Patrick O. Donahue. The Board therefore ordered:

1. A reprimand for the violations contained herein
2. A fine of \$1,000
3. Successful completion of a Board approved 40 hour basic course and a 15 hour USPAP course, by December 31, 2002. This education shall not be eligible for credit toward the continuing education requirement for renewal.



### **PLEASE NOTE!!!!**

### **EFFECTIVE JANUARY 1, 2003**

IN ORDER TO REMAIN IN COMPLIANCE WITH APPRAISAL FOUNDATION GUIDELINES, THE MAINE BOARD OF REAL ESTATE APPRAISERS WILL REQUIRE THAT ALL USPAP INSTRUCTORS BE CERTIFIED WITH THE APPRAISER QUALIFICATIONS BOARD (AOB). ADDITIONALLY, THE MAINE BOARD WILL ONLY ACCEPT USPAP COURSES THAT HAVE BEEN APPROVED BY THE AOB.

THIS ALSO MEANS THAT THE MANDATORY 7 HOURS OF USPAP REQUIRED FOR RENEWALS BEGINNING JANUARY 1, 2003 MUST BE AN AOB APPROVED USPAP COURSE AS WELL.

IF YOU TOOK A NON AOB CERTIFIED USPAP COURSE IN 2002 FOR YOUR RENEWAL IN 2003, YOU WILL NEED TO TAKE AN AOB APPROVED USPAP COURSE IN ORDER TO RENEW YOUR LICENSE IN 2003.

THE BOARD HAS SENT A NOTICE TO EDUCATION PROVIDERS REGARDING THIS CHANGE.



**CURRENT USPAP COURSES**

<b><u>SCHOOL NAME:</u></b>	<b><u>PHONE #</u></b>	
<b>AMERICAN SOCIETY OF APPRAISERS - ASA</b>	<b>703</b>	<b>478-2228</b>
USPAP - AUDIO HOME STUDY-PROCTORED EXAM	15	QE
USPAP CLASSROOM	15	QE
USPAP UPDATE SEMINAR	7	CE
<b>APPRAISAL INSTITUTE</b>	<b>312</b>	<b>335-4100</b>
STANDARDS, PART A	16	QE
STANDARDS, PART B	11	QE
USPAP - PART C	16	QE
ON-LINE STANDARDS, PART B	8	CE
ON-LINE STANDARDS, PART C - PROCTORED EXAM	16	CE
<b>APPRAISAL INSTITUTE - ME</b>	<b>207</b>	<b>741-9012</b>
USPAP UPDATE 2002	7	CE
<b>CENTER FOR REAL ESTATE EDUCATION</b>	<b>207</b>	<b>228-8400</b>
USPAP-CORRESPONDENCE	7	CE
USPAP-1 DAY CLASSROOM	7	CE
USPAP 2 DAY CLASSROOM	15	QE
<b>JMB REAL ESTATE ACADEMY, INC</b>	<b>978</b>	<b>454-7720</b>
USPAP UPDATE SEMINAR	7	CE
USPAP	15	QE
<b>LINCOLN GRADUATE CENTER</b>	<b>800</b>	<b>531-5333</b>
NATIONAL USPAP COURSE	15	QE
USPAP UPDATE #111	7	CE
<b>MBREA</b>		
USPAP NO EXAM	14	CE
USPAP W/EXAM	15	QE
<b>MCKISSOCK DATA SYSTEMS</b>	<b>814</b>	<b>723-6979</b>
USPAP CLASSROOM	8	CE
USPAP UPDATE (CDROM)	7	CE
<b>NATIONAL ASSOCIATION OF INDEPENDENT FEE APPRAISERS</b>	<b>314</b>	<b>781-6688</b>
NATIONAL USPAP	15	QE
NATIONAL USPAP UPDATE	8	CE





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**? BOARD STAFF ?**

Carol Leighton	624-8520
Laurel Grady	624-8518
Kim Baker-Stetson	624-8522
Sue Greenlaw	624-8515

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- \*INSTANT ACCESS TO LAWS AND RULES
- \*E-MAIL BOARD STAFF



**LICENSE STATISTICS**

(AS OF 09/25/2002)

REGISTERED APPRAISER TRAINEES	126
LICENSED RESIDENTIAL APPRAISERS	125
CERTIFIED RESIDENTIAL APPRAISERS	211
CERTIFIED GENERAL APPRAISER	266
TEMPORARY LICENSES	7
<b>TOTAL</b>	<b>735</b>

*This publication is provided for licensees under appropriation 014 02A 4695 012,  
a dedicated revenue account consisting of funds collected from licensing fees.*

DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION  
OFFICE OF LICENSING & REGISTRATION  
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